

Rulemaking Hearing Rules  
of  
The Tennessee Department of Human Services  
Division of Medical Services

Chapter 1240-3-3  
Technical and Financial Eligibility Requirements for Medicaid

Amendments

Rule 1240-3-3-.02, Technical Eligibility Factors, is amended by deleting paragraph (9) in its entirety and by substituting instead the following language so that, as amended, paragraph (9) shall read as follows:

- (9) Institutionalized individuals in a medical institution (i.e., one organized to provide medical care, including nursing and convalescent care) must be continuously confined for thirty (30) consecutive days prior to attaining Medicaid eligibility based on institutionalization. Medicaid eligibility is retroactive to the later of: a) the date of admission; or b) the date of application when thirty (30) consecutive days of institutionalization is met. Coverage of Home and Community Based Services (HCBS) requires a determination that the individual needs, and is likely to receive, HCBS services for thirty (30) consecutive days going forward.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102, 71-5-106, 71-5-107 and 71-5-109; 42 U.S.C. § 1315, 42 USC §§ 1382c(a)(3) and (4), 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396a(a)(10)(A)(ii)(I), (V) and (VI); 42 U.S.C. § 1396d and 42 U.S.C. 1396n(c); 42 C.F.R. §§ 435.210, 217, 435.300, 435.301, 435.403, 435.406, 435.407, 435.530, 435.540, 435.622 and 42 C.F.R. 435.914(c); and TennCare Medicaid Section 1115 Demonstration Waiver.

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The Tennessee Department of Human Services  
Family Assistance Division

Chapter 1240-1-6  
Medicaid Coverage AFDC Only

Amendments

Rule 1240-1-6-.02, Authorizing Medical Benefits, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, 1240-1-6-.02 shall read as follows:

1240-1-6-.02 Authorizing Medical Benefits. Medicaid eligibility begins the later of the date the signed application was received at DHS or the date the applicant is otherwise determined eligible or the date of birth of the newborn. The newborn is deemed to have applied for Medicaid and to be eligible on the date of birth if the mother is eligible for and receiving Medical Assistance at the time. Medicaid benefits continue for the newborn until the child attains age one (1).

Authority: TCA §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102, 71-5-106, 71-5-107, and 71-5-109; 42 U.S.C. § 1315, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. 1396(a)(10)(A)(i)(III) and (IV), 42 U.S.C. § 1396a(e)(4), and 42 U.S.C. 1396a(l)(1), 45 CFR § 206.10, PL 97-35, PL 98-369 §2362; TennCare Medicaid Section 1115 Demonstration Waiver.

Rule 1240-1-6-.06, Extended Medicaid Coverage, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, 1240-1-6-.06 shall read as follows:

1240-1-6-.06 Extended Medicaid Coverage. The extended Medicaid coverage provisions are set out in Department of Human Services State Medicaid Rules at 1240-3-2-.02(2)(a)(1)(i) and (ii).

Authority: TCA §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102, 71-5-106, 71-5-107, and 71-5-109; 42 U.S. C. § 608(a)(11), 42 U.S.C. § 1315, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396u-1 and 42 U.S.C. § 1396a(e)(1); and TennCare Medicaid Section 1115 Demonstration Waiver.

The Tennessee Department of Human Services  
Family Assistance Division

Chapter 1240-1-6  
Medicaid Coverage AFDC Only

Repeals

Rule 1240-1-6-.03, Retroactive Medicaid Coverage, is repealed.

Authority: 42 U.S.C. § 1315 and TennCare Medicaid Section 1115 Demonstration Waiver.

Legal Contact or Party who will approve final copy:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Virginia T. Lodge  
Virginia T. Lodge, Commissioner  
Tennessee Department of Human Services

Glenda Shearon  
Glenda Shearon, Assistant Commissioner  
Adult & Family Services  
Tennessee Department of Human Services

Marcia Garner  
Marcia Garner, Program Director  
Medicaid Policy  
Tennessee Department of Human Services

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on the 27<sup>th</sup> day of September, 2007.

Further, I certify that the provisions of T.C.A. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing was filed in the Department of State on the 29<sup>th</sup> day of June, 2007, and such notice of rulemaking hearing having been published in the July 13, 2007 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 28<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup> days of August, 2007.

Phyllis Simpson  
Phyllis Simpson  
Assistant General Counsel  
Tennessee Department of Human Services

Subscribed and sworn to before me this the 27<sup>th</sup> day of Sept., 2007.



Regina D. Mitchell  
Notary Public

My commission expires on the 24<sup>th</sup> day of May, 2008.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 11 day of Dec. 2007 and will become effective on the 24 day of Feb., 2008.

Riley C. Darnell  
Riley C. Darnell  
Secretary of State

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The Tennessee Department of Human Services  
Division of Medical Services

Chapter 1240-3-3  
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And

Family Assistance Division

Chapter 1240-1-6  
Medicaid Coverage AFDC Only

Regulatory Flexibility Act Statement

TennCare's Demonstration waiver of 1994 eliminated retroactive Medicaid for all Medicaid groups with the exception of applicants for long-term care coverage. Tennessee received an amendment to their Demonstration waiver in 2002 which eliminated retroactive coverage for all Medicaid categories including long-term care. Effective June 28, 2007, the Department of Human Services clarified the thirty (30) days continuous confinement requirement as it relates to the Home and Community Based Services (HCBS) waiver based on the direction from the Bureau of TennCare. In accordance with section 1915(e) of the Social Security Act, 42 U.S.C. § 1315(e), individuals who are enrolled in the HCBS waiver and are likely to remain for thirty (30) days, benefits may begin, if otherwise eligible, without requiring the applicant to actually be enrolled for thirty (30) days.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal law pursuant to 42 U.S.C. § 1315 and the TennCare Medicaid Section 1115 Demonstration Waiver, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules, and, in addition while Medicaid applicants or recipients may be unemployed or employed by small businesses, the rules themselves have no direct impact on the operation of those businesses as defined in the Act.



Phyllis Simpson  
Assistant General Counsel  
Tennessee Department of Human Services

September 27, 2007